FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5452 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. P.S. Pawar for the petitioner.

None for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH AUGUST, 2005.

P.C.:-

The petitioner is defendant 1. The plaintiff filed R.C.S. Suit No.2 of 2004 in the Court of Civil Judge, Junior Division, Medha for relief of perpetual injunction against the petitioner. In that suit, an application for temporary injunction was filed by the plaintiff. The case of the plaintiff is that she is the owner of the suit property and defendant 1 is trying to cut down the trees, damage chapper and gobargas standing on the suit property and is

also trying to construct on the suit property. The trial court came to the conclusion that there is prima facie case for grant of temporary injunction and the balance of convenience tilted in her favour. Defendant 1 carried the matter in appeal. The lower appellate court dismissed the appeal against which judgment the petitioner has filed this writ petition.

I have heard Mr. Pawar, the learned counsel appearing for the petitioner. He drew my attention to the plaint and contended that the description of the property itself shows that the plaintiff has no concern with the temple and open space to the north side of the plaintiff's property. It is separate from the temple property and, hence, the plaintiff is not entitled to any injunction. He contended that it is the plaintiff's case that she has only eight ares in the property being Gat No.472 and, therefore, the trial court could not have granted such a wide injunction order. The learned counsel

further pointed out that in the notice issued by the plaintiff, she has stated that the gobargas plant, bathroom and toilet have already been demolished. The learned counsel further pointed out that the petitioner had filed an application under section 145 of the Code of Criminal Procedure before the learned judge at Medha. In that application, she filed an affidavit and contended that gobargas plant, bathroom and toilet have already been demolished. There is, therefore, no cause of action to file the suit. The learned counsel also drew my attention to paragraph 9 of the lower appellate court's order where the court has noted that the suit is not in respect of the temple. He submitted that this would substantiate the defendant's case that the plaintiff has no cause of action. The learned counsel submitted that therefore both the courts have erred in granting injunction in favour of the plaintiff.

I am not inclined to interfere

with the prima facie concurrent findings of fact recorded by the courts below that the plaintiff is in possession of the suit property and that the balance of convenience tilts in her favour. The lower appellate court has observed that the possession of the plaintiff is only generally disputed and the existence of the plaintiff's structures, the shed and the gobargas plant, is not denied. In view of this, in my opinion, no case is made out for interference with the impugned judgment in my writ jurisdiction. However, in the circumstances of the case, the suit is expedited. Needless to say that all contentions of both sides are kept open.

The trial court is directed to hear and disposed of the suit within a period of one and half year from the receipt of this order by it.

The petitioner shall communicate this order to the respondent.

Writ petition is disposed of.

(SMT. RANJANA DESAI, J.)